

REMARKS/ARGUMENTS

Claims 1-23 are present in this application. By this Amendment, claims 1, 5 and 12 have been amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 1-8, 11 and 12 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 4,516,117 to Couture et al. in view of a website passage entitled "Capacity Control System." This rejection is respectfully traversed.

At the outset, Applicants respectfully submit that the Office Action fails to set forth a *prima facie* case of obviousness. The Examiner bears an initial burden to establish a *prima facie* case of obviousness. It is incumbent on the Examiner to address each of the features defined in the claims in order to establish that the applied references teach or suggest all of the claimed limitations.

In this context, for example, although claim 5 is included in this rejection, the Office Action does not address the subject matter of claim 5. In particular, claim 5 recites that the position zones defined by the plurality of sensors comprise a plurality of angle regions corresponding to an angle of the main boom relative to gravity and a plurality of length regions corresponding to a telescope length of the main boom. Not only is this subject matter lacking in the cited references, but as noted, the Examiner does not address this subject matter. Claim 5 has been rewritten in independent form.

Moreover, MPEP §706.02(j) provides that it is important for an Examiner to properly communicate the basis for a rejection so that the issues can be identified early and the Applicant can be given fair opportunity to reply. In discussing the Couture patent, the Office Action merely provides that "Couture shows the claimed system with the exception of the selector

switch [for] switching between a high and low load capacity.” The Office Action does not reference where in the Couture patent any of the claimed features are disclosed or suggested. In fact, the Office Action does not reference a single passage or drawing element in the Couture patent. As discussed in more detail below, Applicants’ response will clearly point out distinctions between the invention and the Couture patent, referring to specific components and passages in the Couture patent to illustrate the distinctions. Although it may be possible that the Examiner is relying on some other portion or feature of the Couture patent, Applicants are unable to determine what portions of the Couture patent allegedly support the Examiner’s conclusions.

As such, Applicants submit that the Office Action fails to set forth a *prima facie* case of obviousness.

The Couture patent describes a range controller for continuously monitoring the position of the boom of heavy machinery. Couture lists its object to provide a range controller that monitors a position of the boom relative to surrounding obstacles and to provide a signal when the boom is approaching any such obstacles. See, for example, column 1, lines 35-54. In order to achieve this objective, the Couture system enables an operator to set position limits of the boom, and position sensors mounted on the boom and machinery continuously detect the position of the boom with respect to a reference. Once the boom limits are established by the operator, buffer zones are calculated in order to warn the operator that the boom is approaching a limit position.

The Couture system is thus entirely unrelated to a control system that varies a boom envelope based on a load carried by the boom and indicated by a selector switch. The Office Action concludes that it would have been obvious to modify the Couture system to utilize a selector switch, but since the Couture system has no need for such functionality, the Couture

patent in fact lacks any suggestion for the proposed modification. Indeed, “the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992). As noted, the Couture system does not even remotely suggest the desirability of incorporating a load selector switch, and for at least this reason, Applicants submit that the rejection is misplaced.

Moreover, claim 1 has been amended to recite that in addition to the control system controlling an envelope of the platform based on a position of the selector switch, the control system also controls operation of the main boom based on which position zone the platform is located in. The Couture patent and “Capacity Control System” passage, taken singly or in combination lack any teaching or suggestion of this subject matter. Assuming the claimed “position zones” are purportedly met by the zones described in the Couture patent as a working zone, a buffer zone and a forbidden zone, it is clear from the Couture patent that a control system does not vary operation of the main boom based on which position zone the platform is located in, particularly in combination with envelope control according to a selector switch position.

Still further, claim 1 recites that the control system controls a predefined envelope of the platform based on a position of the selector switch. In contrast, in the Couture system, the position limits are set by the operator in order to control a position of the boom with respect to obstacles.

For at least these reasons, Applicants submit that the rejection of independent claims 1 and 12 is misplaced.

With regard to the dependent claims, Applicants submit that these claims are allowable at least by virtue of their dependency on an allowable independent claim. Moreover, claim 5

recites that the position zones defined by the plurality of sensors comprise a plurality of angle regions corresponding to an angle of the main boom relative to gravity and a plurality of length regions corresponding to a telescope length of the main boom. Although claim 5 is included in this rejection, the Office Action does not reference a single teaching in the Couture patent or the "Capacity Control System" passage that purports to disclose or suggest this invention. The Couture patent in fact does not include any reference to an angle of a boom relative to gravity nor does the Couture patent reference position zones including a plurality of angle regions and a plurality of length regions. Claim 5 has been rewritten in independent form.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 8 and 9 were rejected under 35 U.S.C. § 103(a) over Couture in view of "Capacity Control System" and U.S. Patent No. 5,058,752 to Wacht et al. The Wacht patent, however, does not correct the deficiencies noted above with regard to Couture in view of the "Capacity Control System" passage. As a consequence, Applicants submit that dependent claims 8 and 9 are allowable at least by virtue of their dependency on an allowable independent claim. Withdrawal of the rejection is requested.

Applicants acknowledge with appreciation the indication of allowable subject matter in claim 10.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

BEAN et al.
Appl. No. 10/786,158
March 13, 2007

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Alan M. Kagen/
 Alan M. Kagen
 Reg. No. 36,178

AMK:jls
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100